

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
2 Charles K. Verhoeven (Bar No. 170151)
3 charlesverhoeven@quinnemanuel.com
4 Melissa Baily (Bar No. 237649)
5 melissabaily@quinnemanuel.com
6 Lindsay Cooper (Bar No. 287125)
7 lindsaycooper@quinnemanuel.com
8 50 California Street, 22nd Floor
9 San Francisco, California 94111-4788
10 Telephone: (415) 875-6600
11 Facsimile: (415) 875-6700

12 Attorneys for GOOGLE, LLC

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 GOOGLE LLC,
11 Plaintiff,
12 vs.
13 SONOS, INC.,
14 Defendant.

CASE NO. 3:20-cv-06754-WHA
Related to CASE NO. 3:21-cv-07559-WHA

**GOOGLE LLC'S REPLY IN SUPPORT
OF ITS MOTION FOR LEAVE TO
AMEND INVALIDITY CONTENTIONS
PURSUANT TO PATENT L.R. 3-6**

Date: October 13, 2022
Time: 8:00 a.m.
Location: Courtroom 12, 19th Floor
Judge: Hon. William Alsup

TABLE OF CONTENTS

		<u>Page</u>
2		
3	I. INTRODUCTION.....	1
4	II. GOOGLE HAS ESTABLISHED GOOD CAUSE FOR ITS AMENDMENT	2
5	A. The Court Should Grant Google Leave To Amend Because Google Was	
6	Diligent In Moving To Amend	3
7	1. The Law In This District Is Clear: A Party Is Diligent Under Patent	
8	Local Rule 3-6(a) Where, As Here, It Moves For Leave To Amend	
9	Less Than A Month After Receiving A Modified Claim Construction	
10	3
11	2. Sonos Does Not Cite A Single Case Denying A Motion For Leave To	
12	Amend Filed Within Thirty Days Of The Court Adopting A	
13	Construction Different From That Proposed By The Parties	6
14	B. Google's Amendments Do Not Violate The Case Management Order.....	9
15	C. The Lack Of Prejudice To Sonos Provides A Second, Independent Ground	
16	For Granting Google's Motion To Amend	10
17	1. Google's Amendments Do Not Prejudice Sonos	10
18	2. Google Proposed Amendments Are Not A "Repudiation" Of Its	
19	Summary Judgment Arguments.....	11
20	III. GOOGLE HAS NOT INCLUDED UNRELATED AMENDMENTS	14
21	IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

Page	
2	Cases
3	
4	<i>Angioscore, Inc. v. TriReme Medical, Inc.</i> , 2015 WL 75187 (N.D. Cal. Jan. 6, 2015)..... 7
5	<i>Apple, Inc. v. Samsung Electronics Co., Ltd.</i> , 2012 WL 5632618 (N.D. Cal. Nov. 15, 2012)..... 10
6	
7	<i>Cellspin Soft, Inc. v. Fitbit, Inc.</i> , 2021 WL 4923370 (N.D. Cal. Aug. 10, 2021)..... 4, 5
8	<i>Cisco Systems, Inc. v. Teleconference Systems, LLC</i> , 2012 WL 9337627 (N.D. Cal. June 11, 2012) 8
9	
10	<i>Fitbit, Inc. v. Aliphcom</i> , 2017 WL 11673584 (N.D. Cal. July 21, 2017)..... 8
11	
12	<i>Fluidigm Corp. v. IONpath, Inc.</i> , 2020 WL 5073938 (N.D. Cal. Aug. 25, 2020)..... 9, 11
13	
14	<i>Impinj, Inc. v. NXP USA, Inc.</i> , 2022 WL 2125135 (N.D. Cal. Jan. 14, 2022) 4, 5
15	
16	<i>Personalweb Tech., LLC v. Github, Inc.</i> , 2016 WL 3519292 (N.D. Cal. June 28, 2016) 3, 4
17	
18	<i>Radware Ltd. v. F5 Networks, Inc.</i> , 2014 WL 3728482 (N.D. Cal. Jan. 1, 2014) 4, 5
19	
20	<i>Slot Speaker Tech., Inc. v. Apple, Inc.</i> , 2017 WL 1278744 (N.D. Cal. Apr. 6, 2017) 3, 4, 8
21	
22	<i>Synchronoss Techs., Inc. v. Dropbox Inc.</i> , 2018 WL 5619743 (N.D. Cal. Oct. 29, 2018) 10
23	
24	<i>Tech. Properties Ltd. LLC v. Canon Inc.</i> , 2016 WL 1360756 (N.D. Cal. Apr. 6, 2016) 4, 5, 7

1 **I. INTRODUCTION**

2 Patent Local Rule 3-6(a) provides a clear and simple rule that allows a party to amend its
 3 invalidity contentions in response to “[a] claim construction by the Court different from that
 4 proposed by the party seeking amendment.” Google followed both the letter and spirit of the Rule.
 5 Google served invalidity contentions based on the parties’ proposed claim construction positions
 6 for the term “playback queue.” After the Court rejected both parties’ proposed constructions—
 7 materially broadening Google’s construction and materially narrowing Sonos’s construction—
 8 Google promptly updated and filed its proposed amendments just twenty-eight days later to address
 9 the Court’s new, modified construction. These facts are dispositive.

10 Unable to dispute that Google was diligent in moving to amend after receiving the Court’s
 11 modified claim construction, Sonos argues that the relevant date for assessing diligence should be
 12 the date on which the parties submitted their proposed claim constructions. But that is not the law
 13 in this District. Google’s Motion showed that the law in this District is clear: where the court adopts
 14 a construction that differs from that proposed by the parties, a moving party satisfies the diligence
 15 requirement by filing its motion for leave to amend within thirty days of the court’s ruling. Sonos’s
 16 Opposition fails to meaningfully distinguish Google’s authorities and does not cite to a single
 17 authority denying a motion for leave to amend that was filed within thirty days of the court issuing
 18 a claim construction that does something other than simply adopt one of the parties’ proposed
 19 constructions.

20 Faced with the reality that Patent L.R. 3-6(a) permits Google’s amendment, Sonos claims
 21 that this Court’s Case Management Order (Dkt. No. 67, “CMO”) “overrode the procedure of Patent
 22 L.R. 3-6.” Not so. The CMO merely sets forth a procedure for providing back-up contentions in
 23 the event another party’s proposed construction is adopted. But here, Sonos’s proposed construction
 24 was not adopted. Sonos has not cited anything in the CMO that indicates the Court intended to
 25 overrule Patent Local Rule 3-6. In fact, Sonos fails to mention that the CMO expressly states that
 26 the parties must “follow” the “Patent Local Rules,” including “Rules 3-1 to 3-6.”

27 Finally, Google showed that its Motion should also be granted because there is no prejudice
 28 to Sonos. Fact discovery has yet to close and trial is still nearly eight months away. Sonos does not

1 seriously dispute that it has more than enough time to perform any investigation into Google’s
 2 amendments that it believes may be needed. Sonos instead bases its prejudice arguments on two
 3 incorrect assertions: (i) that Google argued a system could not have both a local playback queue and
 4 a cloud queue, and (ii) that Google’s proposed amendments point to “the same functionality” Google
 5 argued was a “local playback queue” at summary judgment on U.S. Patent No. 9,967,615 (“‘615
 6 patent”) and now calls that functionality a “remote playback queue.” Sonos is wrong on both counts.
 7 Google never claimed that a system, such as the YouTube Remote, could not include one mode that
 8 uses a local playback queue and another mode that uses a cloud queue. Google simply showed that
 9 the allegedly infringing YouTube applications long ago eliminated the local playback queue mode
 10 of operation. Google’s prior art YouTube Remote is different because it has two separate modes of
 11 operation: a non-party mode (which uses a local playback queue) and a party mode (which uses a
 12 remote queue). The invalidity issues at summary judgment for the ‘615 patent only related to the
 13 non-party mode. Google’s proposed amendments, in contrast, are directed at the “party mode,”
 14 which allows a user to invite one or more guests to join a “party” and create and edit a “party
 15 playlist” that is stored on a cloud server. The party playlist in the cloud dictates playback on
 16 playback devices that are connected to the party. Thus, the functionality at issue in the ‘615
 17 summary judgment briefing and the functionality in Google’s proposed amendments are clearly
 18 different, and Sonos’s attempt to characterize Google’s positions as contradictory is simply wrong.
 19 The Court should grant Google’s Motion.

20 **II. GOOGLE HAS ESTABLISHED GOOD CAUSE FOR ITS AMENDMENT**

21 Sonos argues that Google should not be granted leave to amend because, according to Sonos,
 22 (1) Google “did not act diligently to invoke Patent Local Rule 3-6(a)” (Dkt. No. 344 (“Opp.”) at 7-
 23 14); (2) “Google’s amendment violates the Court’s Case Management Order” (*Id.* at 14-17), and (3)
 24 Sonos would suffer prejudice if the amendment were granted (*Id.* at 18-22). None of Sonos’s
 25 arguments have merit, as discussed in detail below.

26
 27
 28

1 **A. The Court Should Grant Google Leave To Amend Because Google Was Diligent**
 2 **In Moving To Amend**

3 1. The Law In This District Is Clear: A Party Is Diligent Under Patent Local
 4 Rule 3-6(a) Where, As Here, It Moves For Leave To Amend Less Than A
 5 Month After Receiving A Modified Claim Construction

6 Sonos argues that Google was not diligent in moving to amend its contentions. But this
 7 argument depends upon the faulty premise that diligence should be assessed from the date on which
 8 the parties submitted their proposed claim constructions for the term “playback queue.” Sonos’s
 9 contention is contrary to the law in this District. When the Court does not adopt either of the parties’
 10 proposed constructions, as is the case here, diligence is measured from the date of the Court’s claim
 11 construction ruling. Dkt. No. 336 (“Mot.”) at 5 (citing cases). Indeed, the law in this District is
 12 clear: “A moving party is diligent where it moves for leave to amend within thirty days of an order
 13 adopting a construction that differs from that proposed by the party seeking amendment.” *Id.* Here,
 14 it is undisputed that this Court adopted a construction of “playback queue” that differs from the
 15 constructions proposed by Google and Sonos on August 2, 2022, and that Google moved for leave
 16 to amend to address the Court’s modified construction just twenty-eight days later, on August 30,
 17 2022. These facts are dispositive. No further analysis is required.

18 Tellingly, Sonos is unable to meaningfully distinguish the authorities Google cited in its
 19 Motion. For example, the *Personalweb Tech., LLC v. Github, Inc.*, 2016 WL 3519292 (N.D. Cal.
 20 June 28, 2016) and *Slot Speaker Tech., Inc. v. Apple, Inc.*, 2017 WL 1278744 (N.D. Cal. Apr. 6,
 21 2017) decisions each surveyed the case law in the District and concluded that where the court does
 22 not simply adopt one parties’ proposed construction, leave to amend is “timely” under Patent Local
 23 Rule 3-6(a) if it is filed within “30 days” of the claim construction ruling. Mot. at 5. Sonos does
 24 not attempt to grapple with these courts’ conclusions. Sonos instead notes that in *Personalweb*,
 25 “the motion was agreed by both parties” and in *Slot Speaker* the court denied leave because it had
 26 adopted the non-moving parties’ proposed constructions without modification. Opp. at 12. These
 27 distinctions are irrelevant because they do not contradict those courts’ summaries of the law, and
 28 they do not apply to the facts of this case (where the Court did not adopt either parties’ proposed
 construction).

1 Google also cited numerous other authorities—*Tech. Properties Ltd. LLC v. Canon Inc.*,
 2 2016 WL 1360756 (N.D. Cal. Apr. 6, 2016), *Impinj, Inc. v. NXP USA, Inc.*, 2022 WL 2125135, at
 3 *3 (N.D. Cal. Jan. 14, 2022), *Radware Ltd. v. F5 Networks, Inc.*, 2014 WL 3728482, at *3 (N.D.
 4 Cal. Jan. 1, 2014), and *Cellspin Soft, Inc. v. Fitbit, Inc.*, 2021 WL 4923370, at *2 (N.D. Cal. Aug.
 5 10, 2021)—that are in accord with the recitation of the law in *SlotSpeaker* and *Personalweb*. Each
 6 of these cases granted a motion for leave to amend where, as here, the court did not simply adopt
 7 the construction proposed by the parties and the motion was filed within thirty days of the claim
 8 construction ruling (and in some cases even later). Mot. at 9. Sonos urges the Court to ignore
 9 Google’s authorities because, according to Sonos, the courts in these cases “drastically altered the
 10 proposed constructions,” whereas here the court only “slightly altered the construction that Google
 11 proposed.” Opp. at 13-14. Sonos’s argument is easily dismissed. There is no requirement in Patent
 12 Local Rule 3-6(a) that the Court’s modified construction constitute a substantive alteration of the
 13 parties’ proposed construction, and, even if there were, Google has shown that the Court’s modified
 14 construction would satisfy that requirement.

15 Sonos’s attempt to read an additional requirement into Patent Local Rule 3-6 that the
 16 construction adopted by the Court be “drastically” different from the constructions proposed by the
 17 parties is unsupported and incorrect. None of the authorities cited by Google or Sonos hold that
 18 Patent Local Rule 3-6 includes this additional requirement, as the language of the Local Rule plainly
 19 requires only that claim construction by the Court be “different from that proposed by the party
 20 seeking amendment.” In fact, multiple cases make clear that no such requirement exists.

21 For example, the court in *Tech Properties* squarely rejected the argument Sonos is
 22 attempting to raise. Just as in the instant case, the *Tech Properties* court adopted a “modified
 23 version” of the parties’ construction and found that good cause existed under Patent Local Rule 3-
 24 6(a) to amend plaintiff’s infringement contentions because “the district court in this case did not
 25 simply adopt[] the constructions proposed by Defendants.” 2016 WL 1360756, at *4. The non-
 26 movant urged the court to deny the amendment because the court’s modified construction was not
 27 “so different that amendment infringement contentions were necessary.” *Id.* at *4 n.4. The court
 28 rejected this argument, finding that there was no requirement in Patent Local Rule 3-6 to show that

1 the court’s modified construction was “so different” from the parties’ proposed constructions. *Id.*
 2 It was enough that the movant “served proposed amended contentions less than 30 days after the
 3 court’s order.” *Id.* at *3.

4 Similarly, in *Impinj* the non-movant argued that the relevant date for diligence should be the
 5 date when the parties’ constructions were proposed because the “Court adopted a ‘foreseeable’ claim
 6 construction ‘modifying’ the parties’ proposal.” 2022 WL 2125135, at *4. The *Impinj* court
 7 “decline[d] to adopt Impinj’s unsupported attempts to inject an ‘unforeseeable’ claim construction
 8 order requirement” because it “misstate[d] the legal framework followed in this district.” *Id.* The
 9 court explained that courts in the Northern District of California “consider diligence from the date
 10 of the claim construction order ‘where the moving party’s proposed amendments addressed a
 11 construction that neither party proposed[].’” *Id.* Since the motion to amend at issue in *Impinj* was
 12 filed within a month of the court’s adoption of a modified version of the parties’ proposals, the court
 13 found the motion timely. *Id.*

14 Likewise, the courts in *Radware* and *Cellspin* granted leave to amend after the adoption of
 15 modified constructions, without considering whether the constructions drastically or slightly altered
 16 the parties’ proposed constructions. *Radware*, 2014 WL 3728482, at *3; *Cellspin*, 2021 WL
 17 4923370, at *2. In fact, these decisions rejected the non-movants’ argument that the amendments
 18 were not justified by the court’s modified constructions and concluded that it was enough that the
 19 “presiding judge’s constructions were ultimately different from either definition proposed by the
 20 parties,” *Cellspin*, 2021 WL 4923370, at *2, and that the proposed amendments “relate to the court’s
 21 claim constructions.” *Radware*, 2014 WL 3728482, at *3.

22 Even if Sonos was right (it is not) that the Court’s modified claim construction must
 23 constitute a substantive alteration of the parties’ proposed construction, that is the case here.
 24 Google’s Motion showed how the Court’s modified construction materially broadened the proposed
 25 construction advanced by Google. Mot. at 6. Sonos’s assertion that the Court made only “slight
 26 modifications” to Google’s construction of “playback queue” or adopted it “nearly word-for-word”
 27 is factually inaccurate. Opp. at 9-10. Google’s Motion explained that the Court’s modified
 28 construction materially broadened the proposed construction advanced by Google. Mot. at 6.

1 Indeed, as even Sonos concedes, the Court rejected two of the three limitations that Google included
 2 in its construction. Dkt. No. 316 (“Order”) at 6-8; Opp. at 9-10. Most notably, Google’s
 3 construction of “playback queue” required that the content be “selected by the user” of the control
 4 device for playback. *Id.* at 5. Google argued that where a playback queue is populated with content
 5 selected by entities other than the user of the control device it does not satisfy the “playback queue”
 6 limitation. *See, e.g.*, Dkt. No. 210-3 ¶ 78 (arguing that Sonos had not satisfied the playback queue
 7 limitation because the upNextVideoID that it relies upon is for a “recommended video” and thus
 8 “not ‘selected by the user for playback.’”). In its August 2, 2022 Order, the Court rejected this
 9 aspect of Google’s proposed construction. *See* Mot. at 5. The Court held that the “playback queue”
 10 was not restricted to a playlist in which the content was “selected by the user for playback,” as
 11 Google had proposed, and instead was broad enough to cover playback queues that included content
 12 selected by entities other than the user. *Id.* at 6. Google’s proposed amendments relate to this
 13 modified scope by providing pinpoint citations to source code (and explanation of that source code)
 14 showing that the YouTube Remote includes a “party playlist” that is populated with media selected
 15 by a group of users (the party members) for playback. *Id.* These amendments provide additional
 16 details relating to the theory in Google’s initial contentions that the YouTube Remote satisfies the
 17 “remote playback queue” limitation because the Lounge server (also called the MDx server) keeps
 18 track of the current playlist. Dkt. No. 335-3 (“YTR Amended Claim Chart”) at 7 (“remote playback
 19 queue” is “provided by . . . MDx server”), 9 (“The server keeps track of the playlist.”). Sonos’s
 20 assertion that the Court made only “slight modifications” to Google’s construction of “playback
 21 queue” or adopted it “nearly word-for-word” is factually inaccurate. Opp. at 9-10.

22 2. Sonos Does Not Cite A Single Case Denying A Motion For Leave To Amend
 23 Filed Within Thirty Days Of The Court Adopting A Construction Different
From That Proposed By The Parties

24 Sonos also fails to cite a single case holding that the relevant date for assessing diligence is
 25 the date on which the parties submitted their proposed claim constructions where, as here, the court
 26 modified the parties’ constructions. Nor does Sonos point to any decision denying a motion for
 27 leave to amend contentions that was filed within thirty days of the court adopting a construction
 28 different from that proposed by the parties.

Indeed, Sonos relies upon *Angioscore, Inc. v. TriReme Medical, Inc.*, 2015 WL 75187 (N.D. Cal. Jan. 6, 2015) to argue that Patent Local Rule 3-6 requires Google to show the Court’s modified construction is drastically different than the constructions proposed by the parties. Opp. at 11. More specifically, Sonos cites to a single sentence in this decision which states “[w]hen the party seeking to amend contends that the Court adopted a different claim construction than was proposed, the party must also demonstrate that [] the Court’s construction was ‘so different that amended infringement contentions were necessary.’” Opp. at 11. Sonos’s reliance on this sentence is misplaced for multiple reasons. First, the sentence is dicta. The court in *Angioscore* did not engage in any analysis of the court’s claim construction or whether it was “so different” from the parties’ proposed constructions. Rather, the court assessed plaintiff’s diligence based on the amount of time that had elapsed since the court issued its claim construction ruling and concluded that plaintiff was not diligent because it waited *five months* after the claim construction ruling in the case, and “mere months before trial,” to file its proposed amendments. *Angioscore*, 2015 WL 75187, at *5. Applying the court’s analysis here, Google was diligent because it filed its motion to amend less than thirty days after the Court adopted its modified claim construction and more than eight months before the trial in this case. Second, the sentence in the order Sonos relies upon contains quotation marks but does not cite to any supporting authority. Notably, in the more than six years that have passed since the decision was issued, there has not been a single court that has cited this aspect of the opinion. In fact, Judge Ryu—the Magistrate Judge assigned to the instant case—concluded that this aspect of *Angioscore* was not the law in this District. *Tech. Properties*, 2016 WL 1360756, at *4 n.4 (“[T]he court in *Angioscore* did not cite any authority for this additional test. The court notes that it has not found any cases following this portion of *Angioscore*, and the court respectfully declines to follow it here. Further, *Angioscore* is distinguishable, as the court denied a motion for leave to amend infringement contentions as untimely where the moving party waited five months after the claim construction and summary judgment order to seek leave to amend.”). Third, as explained above, the Court materially broadened Google’s construction of “playback queue” by holding that the playback queue may contain content selected by entities other than the user. Thus, even applying *Angioscore*, Google’s Motion should be adopted.

1 Sonos also cites to *Cisco Systems, Inc. v. Teleconference Systems, LLC*, 2012 WL 9337627
 2 (N.D. Cal. June 11, 2012) to argue that Google was not diligent. Opp. at 12. But *Cisco* is irrelevant
 3 because it did **not** involve the modification of the parties’ proposed constructions—it adopted
 4 defendants’ proposed construction without modification. 2012 WL 9337627, at *1. In fact, courts
 5 in this District have rejected *Cisco*’s application to facts similar to those in the instant case. For
 6 example, in *Fitbit, Inc. v. Aliphcom*, 2017 WL 11673584 (N.D. Cal. July 21, 2017), the plaintiff
 7 proposed that “server” be construed as “a component in communication, directly or indirectly, with
 8 one or more of the device and the client,” which the court adopted with one modification—it
 9 replaced the term “component” with “physical computing device.” *Id.* at *2. When the plaintiff
 10 moved to amend its infringement contentions in response to the modified construction of “server,”
 11 the defendant, like Sonos, cited *Cisco* to argue that the date on which the parties “first proposed
 12 their construction was the proper date for determining diligence.” *Id.* at *3. The *Fitbit* court
 13 disagreed and found “*Cisco* is inapposite to the facts” of its case because (i) “the plaintiff in *Cisco*
 14 did not move to amend its contentions until almost four months after the court’s claim construction
 15 order,” whereas the plaintiff in *Fitbit* served its amended contentions “less than one month after the
 16 claim construction order”; (ii) the court in *Cisco* simply “adopted the defendants’ proposed
 17 construction of relevant terms in its claim construction order,” whereas the *Fitbit* court modified the
 18 parties’ construction; and (iii) the amendments in *Cisco* were “motivated by gamesmanship,”
 19 whereas there is “no indicium of gamesmanship here.” *Id.* at *3. *Cisco* is inapplicable to Google’s
 20 Motion for the same reasons identified by *Fitbit*. See also *Slot Speaker*, 2017 WL 1278744, at *4
 21 (distinguishing cases like *Cisco* in which the court adopts a party’s proposed construction, from
 22 cases in which the court adopts a claim construction that neither party proposed, and explaining that
 23 “[c]ourts generally have granted leave to amend” in the latter situation).

24 Finally, Sonos string cites to a number of additional cases that are entirely irrelevant. Opp.
 25 at 11-12 (citing *O2 Micro*, *Trans Video*, and *Aylus Networks*). As Sonos admits, these cases involve
 26 parties that moved to amend three or more months after the event that provided the basis for the
 27 amendment. *Id.* Here, Google moved to amend within twenty-eight days.
 28

1 **B. Google’s Amendments Do Not Violate The Case Management Order**

2 Sonos also argues that Google’s amendments violate the CMO. Opp. at 14-17. Not so. The
 3 CMO is silent regarding the scenario here: “a claim construction by the Court different from that
 4 proposed by the party seeking amendment.” *See* CMO. That scenario is addressed instead by Patent
 5 Local Rule 3-6, which expressly states that good cause for amendment includes “a claim
 6 construction by the Court different from that proposed by the party seeking amendment.” Faced
 7 with this reality, Sonos argues that the Court’s CMO “overrode the procedure of Patent L.R. 3-6.”
 8 Opp. at 15. But Sonos does not cite any provision in the CMO that indicates an intent to overrule
 9 Patent Local Rule 3-6, or the cases interpreting the Rule. In fact, the CMO expressly states that the
 10 parties must “follow” the “Patent Local Rules,” including “Rules 3-1 to 3-6.” CMO ¶ 22. Sonos’s
 11 argument is thus contradicted by the CMO.

12 The CMO merely sets forth a specific process for providing back-up contentions that address
 13 proposed constructions submitted by the opposing party in its Patent Local Rule 4-2 contentions.¹
 14 Specifically, the CMO provides that a party should disclose back-up theories responsive to the
 15 opposing parties’ proposed claim constructions within twenty-eight days of receiving them and that
 16 “in the event that the other side’s claim construction prevails, such party will not be allowed to assert
 17 back-up theories at that later juncture.” Opp. at 14 (citing CMO ¶ 17). Here, Sonos proposed that
 18 the term “playback queue” be construed as having its “plain and ordinary meaning.” Sonos did not,
 19 at the time, articulate its theory as to what the “plain and ordinary meaning” of “playback queue”
 20 was. Nevertheless, Google’s invalidity contentions applied Google’s understanding of how Sonos
 21 was interpreting the term “playback queue” in its infringement contentions. In particular, Sonos
 22 interpreted the term so broadly as to encompass any data construct on the Lounge server that caches
 23 media items for playback. Thus, Google showed in its original contentions that the YouTube Remote
 24 satisfies the “remote playback queue” limitation under Sonos’s interpretation because the Lounge
 25 server (also called the MDx server) receives and caches playlists from a YouTube Remote
 26

27 ¹ The decision in *Fluidigm Corp. v. IONpath, Inc.*, 2020 WL 5073938, at *4 (N.D. Cal. Aug. 25,
 28 2020) similarly addresses the time a party has to submit “theories in response to an opponent’s claim
 construction proposal.”

1 application. YTR Amended Claim Chart at 7 (explaining that “remote playback queue” is “provided
 2 by” “the MDx server”), 9 (“The [Lounge] server keeps track of the playlist.”). Ultimately, however,
 3 Sonos’s construction did *not* “prevail.” The Court rejected Sonos’s contention that any data
 4 construct that caches media items is a playback queue. Thus, Google’s proposed amendments
 5 provide additional details showing how its disclosed theory that the Lounge server keeps track of a
 6 playlist (e.g., the “party playlist”) satisfies the Court’s modified construction.

7 To the extent the CMO is relevant, it supports Google’s proposed amendments. The CMO
 8 concludes that a party is diligent where it moves to amend within twenty-eight days of receiving a
 9 new claim construction. Applying this rationale to Patent Local Rule 3-6, Google has been diligent
 10 because it moved to amend within twenty-eight days of receiving a new claim construction from the
 11 Court.

12 **C. The Lack Of Prejudice To Sonos Provides A Second, Independent Ground For
 13 Granting Google’s Motion To Amend**

14 Sonos does not dispute that the Court “retains discretion to grant leave to amend even in the
 15 absence of diligence so long as there is no prejudice to the opposing party.” *Synchronoss Techs.,*
 16 *Inc. v. Dropbox Inc.*, 2018 WL 5619743, at *6 (N.D. Cal. Oct. 29, 2018); *see also Apple, Inc. v.*
 17 *Samsung Electronics Co., Ltd.*, 2012 WL 5632618, at *5 (N.D. Cal. Nov. 15, 2012). Here, the lack
 18 of prejudice to Sonos is an additional, independent basis for granting Google’s Motion.

19 1. Google’s Amendments Do Not Prejudice Sonos

20 Sonos does not dispute that Google’s amendments do not require a change to the case
 21 schedule and that plenty of time remains before the close of fact discovery, expert reports, and trial.
 22 Indeed, Sonos received Google’s proposed amendments more than three months before the close of
 23 fact discovery, more than four months before opening expert reports, and more than eight months
 24 before trial. Mot. at 7. And the YouTube Remote source code that Google’s proposed amendments
 25 are based upon has been (and continues to be) available to Sonos. As Google explained in its
 26 Motion, Sonos brought three prior motions to amend its infringement contentions, and took the
 27 position that “6 weeks” before the start of the showdown would “provide Google sufficient time to
 28 respond” to numerous new infringement theories. *Id.* at 8. Sonos cannot now argue that it would

1 be prejudiced where it has eight months before trial to respond to Google’s amended invalidity
 2 theories. Indeed, in *Fluidigm*, this Court granted leave to amend after the service of expert reports
 3 and despite the movant’s lack of diligence because “two months” was enough time to respond to
 4 new infringement theories. 2020 WL 5073938, at *5. Here, in contrast, Google has been diligent
 5 and expert reports and trial are still months away. There is no prejudice.

6 Sonos further argues that it would be prejudiced by the amendment because “it has already
 7 conducted discovery on the YouTube Remote system,” including depositions of two Google
 8 engineers that worked on the YouTube Remote. Opp. at 21-22. But Google’s original invalidity
 9 contentions included its theory that the YouTube Remote discloses a “remote playback queue” by
 10 having the Lounge “server keeps track of the current playlist.” YTR Amended Claim Chart at 7, 9.
 11 Nothing stopped Sonos from asking those engineers about the Lounge server and the playlists the
 12 server keeps track of. In any event, fact discovery remains open in this case. If Sonos believes
 13 Google’s proposed amendments are good cause for additional deposition time, there is nothing
 14 stopping Sonos from making that request.²

15 2. Google Proposed Amendments Are Not A “Repudiation” Of Its Summary
 16 Judgment Arguments

17 Unable to identify any actual prejudice, Sonos resorts to insinuating gamesmanship, and tries
 18 to characterize Google’s proposed amendments as “a repudiation of the leading argument Google
 19 made to justify how its old YouTube Remote products invalidate claim 13 of Sonos’s ’615 patent.”
 20 Opp. at 18. Sonos is wrong and its argument is premised on multiple incorrect assertions.

21 At the previous summary judgment hearing, Google argued that it did not infringe Sonos’s
 22 ’615 patent because the asserted claims require a “local playback queue on the particular playback
 23 device.” Order at 9. More specifically, Google argued that the “local playback queue” limitation
 24 requires storing the *entire* playback queue locally—not just a few individual items from the
 25

26 2 Finally, Sonos argues that Google’s proposed amendments add a citation to a brand-new patent
 27 reference (U.S. Patent No. 10,469,894) (“’894 patent”). Opp. at 22. But the ’894 patent is merely
 28 a continuation of Google’s YouTube Remote Patent, and Google merely cites to Claim 1 of the ’894
 patent as further evidence of the device-picker that the Court has already found is disclosed in
 Google’s contentions. *See* Section III.

1 playback queue. Dkt. No. 278 at 9. Google showed that when playing back media using the accused
 2 Google Play Music and YouTube systems (the “Accused Systems”) the playback queue (in its
 3 entirety) is stored in a cloud queue, and that a playback device merely processes the cloud queue by
 4 temporarily caching the identity of the current and next (and sometime the previous) items that are
 5 in the cloud queue. Order at 9-10. At the same time, Google pointed out that its prior art YouTube
 6 Remote system was capable of storing a playback queue (in its entirety) on the playback device, and
 7 thus anticipated the local playback queue limitation. Dkt. No. 210 (“Google MSJ”) at 17-18. The
 8 Court agreed with Google on both issues and granted summary judgment.

9 Sonos argues that Google is now changing positions by characterizing “the same
 10 functionality” Google argued was a “local playback queue” during summary judgment as a “remote
 11 playback queue” in its proposed amendments. Opp. at 21. This is incorrect. Google’s proposed
 12 amendments are directed at an additional mode of operating the prior art YouTube Remote that was
 13 not at issue for the ’615 patent: “party mode.” In contrast to the non-party mode that was at issue
 14 for the ’615 patent, in party mode the playback queue is stored on a cloud server. In particular, a
 15 user initiates party mode by inviting one or more other guests to join a “party.” YTR Amended
 16 Claim Chart at 13-16. When in party mode, guests may create and edit a “party playlist” that is
 17 stored (in its entirety) in the cloud server. *Id.* at 38 (“Lounge Server receives the
 18 SET_PARTY_PLAYLIST message”). The “party playlist” in the cloud dictates the media set to
 19 playback on the playback device. *Id.* Thus, the prior art YouTube Remote had the ability for a
 20 playback device to play a playlist that is stored on a cloud server (party playlist) when in party mode;
 21 **and** for a playback device to play a playlist that is stored on the playback device when in non-party
 22 mode.

23 Sonos also asserts that “Google unequivocally advanced the premise that a system could
 24 either have a ‘local playback queue’ (stored on the player) or a ‘remote playback queue’ (stored on
 25 the cloud server)—but not both.” Opp. at 20. This is also incorrect. Google never suggested that
 26 a single system could not include two separate and distinct modes of operation: one mode that uses
 27 a “local playback queue” and another mode that uses a “remote playback queue.” Not surprisingly,
 28

1 Sonos does not cite to any statement supporting its assertion. And Sonos knows this statement is
 2 incorrect because Google's expert reports expressly stated as much:

3 Dr. Schmidt contends that the "core" of my non-infringement opinion
 4 "is the faulty premise that a 'local playback queue' and a 'Cloud
 5 Queue' are mutually exclusive." Schmidt Rpt., ¶¶276-287. **This is a
 6 misunderstanding or misrepresentation of my position regarding
 7 the differences between a "cloud queue" and a "local playback
 8 queue."** Whether or not some hypothetical system may store the
 9 playback queue in a cloud queue and also store a copy of that playback
 10 queue locally on the receiver device is irrelevant because [the
 11 accused] YouTube does not store the playback queue at both
 12 locations.

13 ...

14 Dr. Schmidt states: "I see nothing in claim 13 that precludes the
 15 possibility that some other queue (e.g., a cloud queue) might exist in
 16 the system beyond the claimed 'local playback queue.'" Schmidt Rpt.,
 17 ¶277. **I have not precluded such an architecture. . . . A system
 18 might store the playback queue both at the local playback device
 19 and remotely. This is not the case with the accused products.**

20 Ex. 1 ¶¶ 319-20.³

21 The only statements from Google that Sonos quotes explain that (1) by 2013 Google
 22 eliminated the local playback queue on the playback device in favor of maintaining it in a cloud
 23 queue; and (2) processing a cloud queue by temporarily caching the current and next item in the
 24 cloud queue does not disclose a local playback queue. Opp. at 18-19. Google's proposed
 25 amendments are not inconsistent with either of these statements—they certainly do not "repudiat[e]"
 26 them. Specifically, before 2013, Google's YouTube Remote included a mode that stored the
 27 playback queue locally, as well as a party mode that stored the queue in the cloud. Then in 2013,
 28 Google eliminated the local playback queue such that the Accused Applications today use a cloud
 queue in all modes.

29 In short, the existence of a party mode in which the entire playlist is stored on the cloud
 30 server does not in any way contradict Google's argument that merely caching the next item in the
 31 cloud queue is not the same as storing a local playback queue. Sonos's attempt to paint these
 32 positions as inconsistent should be rejected.

33

 34 ³ Exhibit 1 is attached to the Declaration of Nima Hefazi filed in support of this brief and
 35 concurrently herewith.

1 **III. GOOGLE HAS NOT INCLUDED UNRELATED AMENDMENTS**

2 Sonos argues that Google’s proposed amendments “sneak[] in” two new theories: a device-
 3 picker theory and a loungeScreenConnected theory. Opp. at 17. Sonos is wrong. The Court has
 4 already held that the disclosures in Google’s contentions disclose its device-picker theory, and
 5 Google’s contentions also disclose the loungeScreenConnected theory. Google’s proposed
 6 amendments merely update the contentions to include citations to a few pieces of additional
 7 evidence that were discussed during the prior summary judgment proceedings.

8 First, Google’s proposed amendments add a citation to column 10:62-11:6 of U.S. Patent
 9 No. 9,490,998 (“YouTube Remote Patent”) which discloses a “device-picker.”⁴ YTR Amended
 10 Claim Chart at 23-24. Sonos argues that Google’s device-picker theory is “new.” Opp. at 17. But
 11 Sonos already tried to strike the device-picker theory (including column 10:62-11:6 of the YouTube
 12 Remote Patent) and lost—this is merely another attempt to accomplish the same thing. Specifically,
 13 at the prior summary judgment hearing Google showed that the use of a device-picker in the prior
 14 art YouTube Remote was obvious based on its disclosure at column 10:62-11:6 of the YouTube
 15 Remote Patent, as well as the disclosure of a device-picker in other references Google charted (e.g.,
 16 Google’s Tungsten/Nexus Q, Apple’s Airplay, and Sonos’s own prior art). Dkt. No. 210-3 ¶¶ 160-
 17 74; *see also* Google MSJ at 26-27. Sonos moved to strike Google’s device-picker theory on the
 18 grounds that Google’s claim chart for the ’615 patent did not cite to column 10:62-11:6 of the
 19 YouTube Remote Patent.⁵ The Court denied Sonos’s motion to strike. Dkt. No. 315 at 4-5. The
 20 Court correctly held that Google’s invalidity contentions disclosed its device-picker theory by citing
 21 to the YouTube Remote Patent’s disclosure at 4:21-57 and 8:1-59—which teaches that mobile phones
 22 may use any pairing technique (including a device-picker). *Id.* Here, the ’033 patent recites
 23 limitations similar to those in the ’615 patent, and Google’s original claim chart for the ’033 patent
 24 cited the very disclosures that the Court already found disclosed Google’s device-picker theory.

25
 26
 27 ⁴ Google also included a citation to Claim 1 of the ’894 patent, which includes the same device-
 picker disclosures.

28 ⁵ Sonos did not challenge Google’s reliance on the device-picker in Google’s Tungsten/Nexus Q,
 Apple’s Airplay, and Sonos’s own prior art.

1 *See, e.g.*, YTR Amended Claim Chart at 22-23 (non-redlined portions citing to YouTube Remote
 2 Patent at 4:21-57 at 8:1-59). The Court should reject Sonos's attempt to re-litigate this issue.

3 Second, because Sonos previously complained that Google's claim charts did not include
 4 pinpoint citations to source code, Google's proposed amendments add a citation to the portions of
 5 Google's summary judgment declaration that identify pinpoint citation to the source code that
 6 implements the prior art YouTube Remote's loungeScreenConnected message. *Id.* at 42 (citing
 7 Bhattacharjee Decl., ¶¶ 134, 143, 158). Sonos argues that Google's reliance on the
 8 loungeScreenConnected message is a "new" theory. Opp. at 17. The theory is not new. Google's
 9 original claim chart for the '033 patent identified the "loungeScreenConnected" message and
 10 explained that it is used to inform a YouTube Remote application that a playback device (called a
 11 lounge screen or leanback screen) is connected. YTR Amended Claim Chart at 18
 12 ("loungeScreenConnected . . . informs the remote that there is at least one screen connected").
 13 Google's original claim chart also pointed to the "Connected to Leanback screen" dialog box that is
 14 displayed when the prior art YouTube Remote application detects the loungeScreenConnected
 15 message. *Id.* at 40. Thus, Sonos's assertion that Google has presented a new loungeScreenConnect
 16 message is simply inaccurate.

17 **IV. CONCLUSION**

18 For at least the foregoing reasons, the Court should grant Google's Motion.

19

20

21

22

23

24

25

26

27

28

1 DATED: September 20, 2022

2
3
4 QUINN EMANUEL URQUHART & SULLIVAN,
5 LLP

6
7
8 By /s/ Charles K. Verhoeven
9 Charles K. Verhoeven (Bar No. 170151)
10 charlesverhoeven@quinnemanuel.com
11 Melissa Baily (Bar No. 237649)
12 melissabaily@quinnemanuel.com
13 Lindsay Cooper (Bar No. 287125)
14 lindsaycooper@quinnemanuel.com
15 50 California Street, 22nd Floor
16 San Francisco, California 94111-4788
17 Telephone: (415) 875-6600
18 Facsimile: (415) 875-6700

19
20 Attorneys for GOOGLE, LLC

21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that,
3 on September 20, 2022, all counsel of record who have appeared in this case are being served with
4 a copy of the foregoing via the Court's CM/ECF system and email.

5 DATED: September 20, 2022

6 By /s/ Charles K. Verhoeven
Charles K. Verhoeven

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28